

1 Fred W. Schwinn (SBN 225575)
2 CONSUMER LAW CENTER, INC.
3 12 South First Street, Suite 1014
4 San Jose, California 95113-2418
5 Telephone Number: (408) 294-6100
6 Facsimile Number: (408) 294-6190
7 Email Address: fred.schwinn@sjconsumerlaw.com

5 Attorney for Plaintiff
SUSAN RAE OWENS

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

10 SUSAN RAE OWENS,
11 Plaintiff,
12 v

13 ERICA L. BRACHFELD, A
14 PROFESSIONAL CORPORATION, D/B/A
15 BRACHFELD & ASSOCIATES, P.C.,
16 D/B/A LAW OFFICES OF BRACHFELD &
ASSOCIATES, P.C., a California
corporation, and ERICA LYNN
17 BRACHFELD, individually and in her
official capacity.

Defendants.

Case No. 07-04400-JF-PVT

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, PARTIAL
SUMMARY ADJUDICATION**

[Fed. R. Civ. P. 56]

Date: February 1, 2008
Time: 9:00 a.m.
Judge: Honorable Jeremy Fogel
Courtroom: 3, 5th Floor
Place: 280 South First Street
San Jose, California

19 | TO: ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE that on February 1, 2008, at 9:00 a.m., or as soon thereafter as this
21 matter may be heard, in Courtroom 3 of the United States District Court, located at 280 South First
22 Street, San Jose, California, before the Honorable Jeremy Fogel, United States District Judge,
23 Plaintiff, SUSAN RAE OWENS (“Movant”), will move the Court for an Order granting the Movant
24 summary judgment: (1) declaring that Defendants’ collection letter (Exhibit “1”) violates the Fair
25 Debt Collection Practices Act, 15 U.S.C. §§ 1692c(b), 1692d, 1692d(3), 1692e(14), and 1692f; (2)
26 declaring that the envelope Defendants’ mailed the collection letter in (Exhibit “2”) violates the Fair
27 Debt Collection Practices Act, 15 U.S.C. § 1692e(14); (3) declaring that Defendants’ collection
28 letter (Exhibit “1”) violates the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§

1 1788.13(a) and 1788.17; (4) declaring that the envelope Defendants' mailed the collection letter in
 2 (Exhibit "2") violates the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§
 3 1788.12(c), 1788.12(d), 1788.13(a), and 1788.17; (5) awarding Plaintiff statutory damages in an
 4 amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A); (6) awarding Plaintiff
 5 statutory damages in an amount not less than \$100 nor greater than \$1,000 pursuant to Cal. Civil
 6 Code § 1788.30(b); (7) awarding Plaintiff statutory damages in an amount not exceeding \$1,000
 7 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code § 1788.17; (8) awarding
 8 Plaintiff the costs of this action and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3)
 9 and Cal. Civil Code §§ 1788.30(c) and 1788.17; and (9) awarding Plaintiff such other and further
 10 relief as may be just and proper.

11 In the alternative, Plaintiff will move the Court for an Order granting the Movant partial
 12 summary adjudication pursuant to Fed. R. Civ. P. 56(d) on the following factual issues: (1) Plaintiff
 13 is a "consumer" as that term is defined by 15 U.S.C. § 1692(a)(3) and a "debtor" as that term is
 14 defined by Cal. Civil Code § 1788.2(h); (2) Defendants are each a "debt collector" as that term is
 15 defined by 15 U.S.C. § 1692a(6); (3) Defendant, B&A, is a "debt collector" as that term is defined
 16 by Cal. Civil Code § 1788.2(c); and (4) the debt being collected by Defendants was a "debt" as that
 17 term is defined by 15 U.S.C. § 1692a(5) and a "consumer debt" as that term is defined by Cal. Civil
 18 Code § 1788.2(f).

19 This motion is made pursuant to Fed. R. Civ. P. 56 and Civil L.R. 56-1 on the grounds that
 20 Plaintiff is entitled to summary judgment, or in the alternative, partial summary adjudication as a
 21 matter of law.

22 This motion is based on this Notice of Motion and Motion for Summary Judgment, or in the
 23 Alternative, Partial Summary Adjudication, the Declaration of Susan Rae Owens in Support of
 24 Motion for Summary Judgment, the Declaration of Fred W. Schwinn in Support of Motion for
 25 Summary Judgment, the Memorandum of Points and Authorities in Support of Motion for Summary
 26 Judgment, or in the Alternative, Partial Summary Adjudication filed herewith, and such other
 27 evidence, argument, and authorities which may be presented at or prior to the hearing before this
 28 Court on this Motion, and such other and further matters of which this Court may take judicial

1 notice.

2 Please govern yourself accordingly.

3 CONSUMER LAW CENTER, INC.

4

5 Dated: December 28, 2007

6 By: /s/ Fred W. Schwinn

7 Fred W. Schwinn, Esq.

8 Attorney for Plaintiff

9 SUSAN RAE OWENS

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28